

HOUSE BILL NO. 674

INTRODUCED BY C. VINCENT

BY REQUEST OF THE HOUSE NATURAL RESOURCES STANDING COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO CERTAIN STATE LANDS; AUTHORIZING THE CREATION OF STATE DEBT THROUGH THE ISSUANCE OF GENERAL OBLIGATION BONDS FOR PURCHASE AND MANAGEMENT OF REAL PROPERTY AND APPURTENANCES FOR SUSTAINABLE FOREST MANAGEMENT, RECREATIONAL USE, AND INCOME-GENERATING POTENTIAL; APPROPRIATING THE PROCEEDS OF THE BONDS FOR PURCHASE AND MANAGEMENT OF REAL PROPERTY AND APPURTENANCES FOR SUSTAINABLE FOREST MANAGEMENT, RECREATIONAL USE, AND INCOME-GENERATING POTENTIAL; PROVIDING CONSIDERATIONS FOR THE BOARD OF LAND COMMISSIONERS TO TAKE INTO ACCOUNT WHEN DETERMINING WHETHER TO REQUEST THE ISSUANCE OF BONDS; PROVIDING FOR THE OFFSETTING OF LAND PURCHASES; PROVIDING FOR THE DISPOSITION OF INTEREST AND INCOME; REQUIRING NOTICE ON LAND ACQUISITIONS FOR THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS; REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO PAY AN AMOUNT EQUAL TO TAXES ON LAND PURCHASES; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-5-803, 17-7-502, 87-1-209, AND 87-1-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Public school land acquisition account. (1) There is a public school land acquisition account in the state special revenue fund established in 17-2-102. The account must be administered by the department.

(2) Money in the account may be used only for the purpose of purchasing and managing interests in and appurtenances to real property in accordance with [section 2].

(3) After deductions are made pursuant to 77-1-109 and 77-1-613, the net interest and income earned on real property and appurtenances purchased with funds from the account must be distributed to the school facility improvement account provided for in 20-9-516.

1
2 **NEW SECTION. Section 2. Public school land purchases -- considerations -- distributions.** (1)

3 The board may request the board of examiners to issue bonds for the purpose of purchasing interests in and
4 appurtenances to real property selected by the board in accordance with the requirements of this section. Upon
5 issuance of the bonds, the board shall purchase the real property and its appurtenances.

6 (2) Prior to requesting the issuance of bonds under subsection (1), the board shall consider the following:

7 (a) the income-generating potential of the real property and appurtenances;

8 (b) the opportunity for sustainable forest management activities and outcomes as described in 76-13-701
9 and 76-13-702; and

10 (c) the opportunity for recreational use of the real property and appurtenances consistent with Title 77,
11 chapter 1, part 8.

12 (3) Prior to requesting the issuance of bonds, the board or the department, at the board's direction, shall
13 complete a cost-benefit analysis of potential real property and appurtenance purchases. This cost-benefit analysis
14 must be made available to the public upon request.

15 (4) Prior to purchasing any real property and appurtenances, the board shall determine that the benefits
16 of the purchase are significant and that the financial risks are prudent. In order to reach that determination, the
17 board shall examine the purchase of any real property and appurtenances as if the board had a fiduciary duty
18 as a reasonably prudent trustee of a perpetual trust. For the purposes of this section, that duty requires the board
19 to:

20 (a) discharge its duties with the care, skill, and diligence that a prudent person acting in a similar capacity
21 with the same resources and familiar with similar matters should exercise in the conduct of an enterprise of similar
22 character and aims;

23 (b) manage the land holdings purchased pursuant to [section 1] and this section in accordance with an
24 asset management plan to minimize the risk of loss and maximize the sustained rate of return;

25 (c) discharge its duties and powers solely in the interest of and for the benefit of the trust; and

26 (d) discharge its duties subject to the fiduciary standards set forth in 72-34-114.

27 (5) All interests in real property and appurtenances acquired under this section must be managed
28 pursuant to Title 77.

29
30 **NEW SECTION. Section 3. Offsetting purchases.** To the extent practical and consistent with the

board's powers and duties pursuant to 77-1-202, the board shall offset purchases made pursuant to [sections 1 and 2] by selling an equal amount of land.

Section 4. Section 17-5-803, MCA, is amended to read:

"17-5-803. Form -- principal and interest -- fiscal agent -- bond registrar and transfer agent -- deposit of proceeds. (1) Subject to the limitations contained in this part and in the bond act and in the furtherance of each bond act, bonds may be issued by the board upon request of the department. The bonds may be issued in the denominations and form, whether payable to bearer or registered as to principal or both principal and interest, with provisions for conversion or exchange, and for the issuance of temporary bonds bearing interest at a rate or rates, maturing at times not exceeding 30 years from date of issue, subject to redemption at earlier times and prices and on notice, and payable at the office of the fiscal agency of the state as the board determines.

(2) In all other respects, the board is authorized to prescribe the form and terms of the bonds and do whatever is lawful and necessary for their issuance and payment. Action taken by the board under this part must be by a majority vote of its members. The state treasurer shall keep a record of all bonds issued and sold.

(3) The board is authorized to employ a fiscal agent and a bond registrar and transfer agent to assist in the performance of its duties under this part.

(4) The board, in its discretion, is authorized to pay all costs of issuance of bonds, including without limitation rating agency fees, printing costs, legal fees, bank or trust company fees, costs to employ persons or firms to assist in the sale of the bonds, line of credit fees and charges, and all other amounts related to the costs of issuing the bonds from amounts available for these purposes in the general fund or from the proceeds of the bonds.

(5) ~~All~~ Unless otherwise provided in statute authorizing a bond, all proceeds of bonds and notes issued under this part must be deposited in the capital projects account, except that any premiums and accrued interest received and the proceeds of refunding bonds or notes must be deposited in the debt service account."

Section 5. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both

1 of the following provisions:

2 (a) The law containing the statutory authority must be listed in subsection (3).

3 (b) The law or portion of the law making a statutory appropriation must specifically state that a statutory
4 appropriation is made as provided in this section.

5 (3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120;
6 5-11-407; 5-13-403; 7-4-2502; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314;
7 10-4-301; 15-1-121; 15-1-218; 15-23-706; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121;
8 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304;
9 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506;
10 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-4-202;
11 23-4-204; 23-4-302; 23-4-304; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501;
12 39-71-503; 41-5-2011; 42-2-105; 44-1-504; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108;
13 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-150; 77-1-108;
14 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 87-1-603; 90-1-115; 90-1-205;
15 90-3-1003; and 90-9-306.

16 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
17 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
18 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana
19 to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state
20 treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory
21 appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion
22 of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is
23 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014;
24 pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108
25 terminates June 30, 2010; pursuant to sec. 17, Ch. 593, L. 2005, the inclusion of 15-31-906 terminates January
26 1, 2010; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates upon the death of the last
27 recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; and pursuant to sec. 6,
28 Ch. 2, Sp. L. September 2007, the inclusion of 76-13-150 terminates June 30, 2009.)"

29

30 **Section 6.** Section 87-1-209, MCA, is amended to read:

1 **"87-1-209. Acquisition and sale of lands or waters.** (1) ~~The~~ Subject to [section 7], the department,
2 with the consent of the commission and, in the case of land acquisition involving more than 100 acres or
3 \$100,000 in value, the approval of the board of land commissioners, may acquire by purchase, lease, agreement,
4 gift, or devise and may acquire easements upon lands or waters for the purposes listed in this subsection. The
5 department may develop, operate, and maintain acquired lands or waters:

6 (a) for fish hatcheries or nursery ponds;

7 (b) as lands or water suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or
8 protection;

9 (c) for public hunting, fishing, or trapping areas;

10 (d) to capture, propagate, transport, buy, sell, or exchange any game, birds, fish, fish eggs, or fur-bearing
11 animals needed for propagation or stocking purposes or to exercise control measures of undesirable species;

12 (e) for state parks and outdoor recreation;

13 (f) to extend and consolidate by exchange, lands or waters suitable for these purposes.

14 (2) The department, with the consent of the commission, may acquire by condemnation, as provided in
15 Title 70, chapter 30, lands or structures for the preservation of historical or archaeological sites that are
16 threatened with destruction or alteration.

17 (3) (a) Subject to section 2(3), Chapter 560, Laws of 2005, the department, with the consent of the
18 commission, may dispose of lands and water rights acquired by it on those terms after public notice as required
19 by subsection (3)(b) of this section, without regard to other laws that provide for sale or disposal of state lands
20 and with or without reservation, as it considers necessary and advisable. The department, with the consent of
21 the commission, may convey department lands and water rights for full market value to other governmental
22 entities or to adjacent landowners without regard to the requirements of subsection (3)(b) or (3)(c) if the land is
23 less than 10 acres or if the full market value of the interest to be conveyed is less than \$20,000. When the
24 department conveys land or water rights to another governmental entity or to an adjacent landowner pursuant
25 to this subsection, the department, in addition to giving notice pursuant to subsection (3)(b), shall give notice by
26 mail to the landowners whose property adjoins the department property being conveyed.

27 (b) Subject to section 2(3), Chapter 560, Laws of 2005, notice of sale describing the lands or waters to
28 be disposed of must be published once a week for 3 successive weeks in a newspaper with general circulation
29 printed and published in the county where the lands or waters are situated or, if a newspaper is not published in
30 that county, then in any newspaper with general circulation in that county.

(c) The notice must advertise for cash bids to be presented to the director within 60 days from the date of the first publication. Each bid must be accompanied by a cashier's check or cash deposit in an amount equal to 10% of the amount bid. The highest bid must be accepted upon payment of the balance due within 10 days after mailing notice by certified mail to the highest bidder. If that bidder defaults on payment of the balance due, then the next highest bidders must be similarly notified in succession until a sale is completed. Deposits must be returned to the unsuccessful bidders except bidders defaulting after notification.

(d) The department shall reserve the right to reject any bids that do not equal or exceed the full market value of the lands and waters as determined by the department. If the department does not receive a bid that equals or exceeds fair market value, it may then sell the lands or water rights at private sale. The price accepted on any private sale must exceed the highest bid rejected in the bid process.

(4) When necessary and advisable for the management and use of department property, the director is authorized to grant or acquire from willing sellers right-of-way easements for purposes of utilities, roads, drainage facilities, ditches for water conveyance, and pipelines if the full market value of the interest to be acquired is less than \$20,000. Whenever possible, easements must include a weed management plan. Approval of the commission is not required for grants and acquisitions made pursuant to this subsection. In granting any right-of-way pursuant to this subsection, the department shall obtain a fair market value, but the department is not otherwise required to follow the disposal requirements of subsection (3). The director shall report any easement grant or acquisition made pursuant to this subsection to the commission at its next regular meeting.

(5) The department shall convey lands and water rights without covenants of warranty by deed executed by the governor or in the governor's absence or disability by the lieutenant governor, attested by the secretary of state and further countersigned by the director.

(6) ~~The Subject to [section 7],~~ the department, with the consent of the commission, is authorized to utilize the installment contract method to facilitate the acquisition of wildlife management areas in which game and nongame fur-bearing animals and game and nongame birds may breed and replenish and areas that provide access to fishing sites for the public. The total cost of installment contracts may not exceed the cost of purchases authorized by the department and appropriated by the legislature.

(7) The department is authorized to enter into leases of land under its control in exchange for services to be provided by the lessee on the leased land."

NEW SECTION. **Section 7. Notice of proposed land acquisitions.** (1) For all land acquisitions

1 proposed pursuant to 87-1-209, the department shall provide notice to the board of county commissioners in the
2 county where the proposed acquisition is located.

3 (2) The notice must be provided at least 30 days before the proposed acquisition appears before the
4 commission for its consent.

5 (3) The notice must include:

6 (a) a description of the proposed acquisition, including acreage and the use proposed by the department;

7 (b) an estimate of the measures and costs the department plans to undertake in furtherance of the
8 proposed use, including operating, staffing, and maintenance costs;

9 (c) an estimate of the property taxes payable on the proposed acquisition and a statement that if the
10 department acquires the land pursuant to 87-1-603, the department would pay a sum equal to the amount of
11 taxes that would be payable on the county assessment of the property if it was taxable to a private citizen; and

12 (d) a draft agenda of the meeting at which the proposed acquisition will be presented to the commission
13 and information on how the board of county commissioners may provide comment.

14
15 **Section 8.** Section 87-1-603, MCA, is amended to read:

16 **"87-1-603. Payments to counties for department-owned land -- exceptions.** (1) Except as provided
17 in subsection (3), before ~~Before~~ November 30 of each year, the treasurer of each county in which the department
18 owns any land shall describe the land, state the number of acres in each parcel, and request the drawing of a
19 warrant to the county in a sum equal to the amount of taxes ~~which that~~ that would be payable on county assessment
20 of the property ~~were it~~ if it was taxable to a private citizen. The director shall approve or disapprove the request.
21 The director may disapprove a request only if the director finds it to be inconsistent with this section. If the director
22 disapproves a request, the director shall return it with an explanation detailing the reasons for the disapproval
23 to the appropriate county treasurer for correction. If the director approves a request, the director shall transmit
24 it to the department of administration, which shall draw a warrant payable to the county in the amount shown on
25 the request and shall send the warrant to the county treasurer. The warrant is payable out of any funds to the
26 credit of the department of fish, wildlife, and parks. A payment may not be made to a county in which the
27 department owns less than 100 acres. A payment may not be made to a county for lands owned by the
28 department for game or bird farms or for fish hatchery purposes or lands acquired and managed for the purposes
29 of Title 23, chapter 1.

30 (2) After [the effective date of this act], for every department purchase of land, the department shall notify

1 the treasurer in the county where land was purchased.

2 (3) (a) After [the effective date of this act] and before November 30 of each subsequent year, the
3 treasurer of each county in which the department owns land purchased after [the effective date of this act] shall
4 describe the land, state the number of acres in each parcel, and request the drawing of a warrant to the county
5 in a sum equal to the amount of taxes that would be payable on county assessment of the property if it was
6 taxable to a private citizen.

7 (b) The director shall approve or disapprove the request. The director may disapprove a request only if
8 the director finds it to be inconsistent with this subsection (3). If the director disapproves a request, the director
9 shall return it with an explanation detailing the reasons for the disapproval to the appropriate county treasurer for
10 correction. If the director approves a request, the director shall transmit it to the department of administration,
11 which shall draw a warrant payable to the county in the amount shown on the request and shall send the warrant
12 to the county treasurer. The warrant is payable out of any funds to the credit of the department of fish, wildlife,
13 and parks.

14 (c) All land purchased by the department after [the effective date of this act] is subject to this subsection
15 (3).

16 (4) The amount to be paid to each county pursuant to this section is statutorily appropriated, as provided
17 in 17-7-502."

18
19 **NEW SECTION. Section 9. Authorization of bonds.** Upon request of the board of land commissioners,
20 the board of examiners is authorized to issue and sell general obligation bonds in an amount not exceeding \$21
21 million for the purchase of interests in and appurtenances to real property described in [section 2] in addition to
22 the amount of general obligation bonds outstanding or authorized on January 1, 2009. The proceeds from the
23 bonds sold under this section must be deposited in the public school land acquisition account established in
24 [section 1]. The bonds must be sold and issued in accordance with the terms and in the manner required by Title
25 17, chapter 5, part 8.

26
27 **NEW SECTION. Section 10. Appropriation of bond proceeds.** Up to \$21 million is appropriated to
28 the board of land commissioners from the public school land acquisition account from the proceeds of the bonds
29 authorized in [section 9] and investment earnings on the account for the purchase of interests in and
30 appurtenances to real property by the board as authorized in [section 2].

1

2 **NEW SECTION.** **Section 11. Codification instruction.** (1) [Sections 1 through 3] are intended to be
3 codified as an integral part of Title 77, chapter 1, part 2, and the provisions of Title 77, chapter 1, part 2, apply
4 to [sections 1 through 3].

5 (2) [Section 7] is intended to be codified as an integral part of Title 87, chapter 1, part 2, and the
6 provisions of Title 87, chapter 1, part 2, apply to [section 7].

7

8 **NEW SECTION.** **Section 12. Severability.** If a part of [this act] is invalid, all valid parts that are
9 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
10 the part remains in effect in all valid applications that are severable from the invalid applications.

11

12 **NEW SECTION.** **Section 13. Coordination instruction.** If House Bill No. ____ [LC 2343] is not passed
13 or if there is not an appropriation in House Bill No. 645 to provide loans to the wood products industry, then this
14 act is void.

15

16 **NEW SECTION.** **Section 14. Two-thirds vote required.** Because [section 9] authorizes the creation
17 of state debt, Article VIII, section 8, of the Montana constitution requires a vote of two-thirds of the members of
18 each house of the legislature for passage.

19

20 **NEW SECTION.** **Section 15. Effective date.** [This act] is effective on passage and approval.

21

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